

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: **Hans Herweijer,**)
Jon A. Wolff, Larry F. Whitesell and)
Matthew R. Wolff)

Serial No.: 09/330,909)

Filed: 6/11/99)

Group Art Unit: 1632)

Examiner: **J. Woitach**

For: A Process For Delivering Nucleic Acids To Cardiac Tissue

PETITION UNDER 37 C.F.R. §1.8

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Dear Sir:

Applicant petitions the Commissioner of Patents and Trademarks to consider accepting an Amendment and Response filed but not received by the Patent and Trademark Office. The facts are as follows:

Applicant express mailed the Amendment and Response along with a Petition for Extension of Time and fee to the Patent and Trademark Office on April 14th, 2000. The dated express mail certificate was received from the US Postal Service, however, no postcard was sent and copies of the signed documents were not obtained. Subsequently, Applicants discovered that the Patent and Trademark Office did not receive the filing.

Applicants believe that according to the rules, sufficient evidence can be provided to allow the PTO to grant timely filing. According to Rule 1.8:

" ... the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement."

Applicants believe that they have complied with the regulation. The Patent and Trademark Office was informed promptly; a copy of the previously mailed correspondence and certificate is supplied; and, a statement is provided which attests to the previous timely mailing.

Applicants anticipate an objection to the copy of the correspondence in that the copy is not signed. However, Applicants submit that the correspondence is a true copy of the original which is stored in a computer hard drive. A copy of the signatures was not obtained because the location of the Post Office was an alternate location in another state and was not the home Post Office and a copy machine was not available. Applicants believe that a true copy should be sufficient under the rule and a statement is provided that attests to the fact that the copy is a true copy and the mailing was timely.

To further support the truth in these statements, Applicants further submit that the computer stored copy could have been printed and signed and faxed to the Patent and Trademark Office instead of the blank true copy. However it was believed that the true computer copy should be submitted with a separate verification of its authenticity and timely filing. The Rule simply states that a copy be provided and Applicants believe the rule intends for a true copy to be provided.

Applicants anticipate an objection to the wording of the certificate since the words "express mail" were used. However, under MPEP Section 512: Procedure by Applicant, subsection (F) For the purposes of 37 CFR 1.8(a)(1)(i)(A), first class mail is interpreted as including "Express Mail" and "Priority Mail" deposited with the U.S. Postal Service. Therefore, the certificate was properly worded and may be considered under the rules for certificate of mailing.

The undersigned attorney and Applicants' representative hereby attests on a personal knowledge basis to the previous timely mailing of April 14, 2000 and the fact that the certificate was signed and dated with that date when it was mailed. The undersigned has personal knowledge because the representative always personally signs and mails documents for Applicants without assistance from a secretarial staff.

37 C.F.R. §1.137

In order to provide Applicants with a timely review of their Amendment and Response: if the above Petition is not allowed, the undersigned hereby requests that the abandonment be considered unintentional under Rule 1.137 and that this Petition be converted to a §1.137 Petition. The entire delay in filing the required reply from the due date for the reply until this filing was unintentional.

If the conversion to a §1.137 is necessary and accepted, please charge deposit account number 07-2357 in the amount of \$605.00 to cover the petition fee as set forth in § 1.17(m) and notify the undersigned accordingly.

Respectfully submitted,

Mark K. Johnson, Reg. No. 35,909
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New Berlin, WI 53151-0644
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I hereby certify that this
correspondence is being facsimile
transmitted to Robert Hill at the
United States Patent and Trademark
Office, Fax No. (703) 305-7230 on
August 7, 2000

Signature

Date

RECEIVED
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OFFICE OF PETITIONS

Mark K. Johnson
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New Berlin, WI 53151-0644

FACSIMILE TRANSMITTAL COVER SHEET

CONFIDENTIAL

December 1, 2000

TO: Robert Hill Fax: 703 305-7230

FROM: Mark K. Johnson 

Total number of pages: 4 including this page.

If you do not receive all pages, please call 262-821-5690 or FAX 262-821-5645.

MESSAGE:

Attached is a copy of the Petition that was faxed on August 7, 2000 as you requested. If you have any further questions, please contact me.

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipients named above. If you have received this communication in error, please notify us immediately by telephone and return the original message and all copies to us by mail at our expense.